

Letter of Appeal  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

June 23, 2016

**Letter of Appeal- Submitted 6/23/2016**

CC Docket No. 02-6

This Letter of Appeal is for Long Branch School District, BEN 123015. This is to appeal the denial of FRN 2637778, 471 Application Number 957877 for the 2014-2015 funding year.

The contact information for this appeal is:

Mark Seltzer  
256 Eagleview Blvd. #513  
Exton, PA 19341  
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Fax: 610-280-6111  
Email: markseltzer@trmgi.com

**Appeal Information:**

This appeal is for an FRN that was denied by USAC during a Special Compliance Review and during the USAC Appeals Process.

The denial reason given was that the district did not fairly evaluate bidders based on the cost of eligible services and included ineligible charges, specifically early termination charges. This is incorrect. I will explain why and provide supporting documentation. I will include all documentation, including the Appeal to USAC, in which we explained that this was not only incorrect, but that this could not possibly be correct.

For the sake of clarify, I will remove some of the items in the original appeal to USAC. Perhaps USAC did not understand what was stated. Since I am including the original appeal to USAC, I will also try not to be overly repetitive, to reduce the length of this appeal.

**Background:**

The State of New Jersey implemented on-line testing, known as PARCC, during the 2014-2015 funding year. This testing required that all State testing be completed on-line, as opposed to on paper, as it had been done in the past. Most districts began to increase their internet bandwidth to support this testing in 2013-2014. In many cases, districts were in a multi-year contract, for which early termination charges applied, if the existing contract was broken. Long Branch

School District originally bid their Internet Access in 2012-2013 and the winning bidder was Net Carrier. A 36-month contract was executed with Net Carrier. Due to the transition to the on-line testing, the internet bandwidth had to be increased sooner than the district anticipated, with a portion of the original contract remaining, for which termination charges would have applied.

In 2014-2015, in an effort to address the increased costs associated with this on-line testing, the NJ Department of Education announced that it was creating a consortium for Internet Access. This consortium was not available until 2015-2016, after the start date of the on-line testing. This consortium involved the Department of Education and an ESA.

These consortiums were often somewhat political, with State agencies promoting them and questioning why a district would choose to not participate, based on the assumption that the district would save money by participating in the consortium. Districts began to document the calculations associated with their reason for not participating in the consortiums, to demonstrate that it was not cost-effective to join the consortium. When existing contracts were involved, districts calculated the cost of breaking the existing contract to document why joining the consortium was not cost-effective, as they would have to pay early termination penalties. This is exactly what Long Branch did. This was documented on the bid evaluation for State purposes, but was absolutely not a factor when the district selected a Service Provider. The district was simply documenting the cost of each bidder over a 36-month period, including early termination costs, so that it could later be compared to the consortium cost, when it existed, if a State agency requested an explanation.

### **Specifics to Bid Evaluation:**

Due to the fact that the district had an existing contract and this was an upgrade, the district re-bid the service on a Form 470, in 2014-2015. Prior to the bid evaluation being completed, we attempted to locate an example of how to consider early termination charges on USAC's website. The example was apparently removed when USAC redesigned the website. While still searching for this information, an initial Bid Evaluation was done for this FRN and all other FRNs. This initial Bid Evaluation did consider the early termination charges, after they were confirmed by the current provider. This was not the final Bid Evaluation, or the one used to award the contract. Later, after the example of how to consider early termination charges could not be found, the district completed a second Bid Evaluation, which did not consider the early termination charges, but still recorded them, for State purposes. This Bid Evaluation was sent to the reviewer after the FRN was originally denied, but the FRN was still denied. The second Bid Evaluation clearly awards the maximum number of points for the cost of eligible services to Xtel, the bidder with the lowest cost bid, which proves that early termination charges could not have been a decision factor in the evaluation. The second Bid Evaluation does still list the cost per provider for the 36-month term, regardless of the term quoted in the bid, plus the early termination charges; however this was just for the purpose of documenting the cost associated with not joining the NJ Department of Education's consortium. (See the bid evaluations on pages 8-9 of the attachment).

The bid evaluation used to select a Service Provider (see page 8) awards the following point values for the cost of eligible services, from highest to lowest:

Xtel – 80 points, based on a monthly cost of \$3,900.00

Optimum Lightpath – 75 points, based on a monthly cost of \$5,500.00

Cogent – 72 points, based on a monthly cost of \$6,358.00 and a \$1,000.00 installation fee

Net Carrier – 68 points, based on a monthly cost of \$6,999.00.

This is consistent with USAC rules and could not possibly include ineligible charges, such as early termination charges. The bidder with the lowest cost was awarded the maximum number of points for price and the bidder with the highest cost was awarded the lowest number of points for cost. USAC's decision assumes the opposite, which is clearly not the case, as indicated on the bid evaluation.

Had early termination charges been a decision factor, the results would have been the exact opposite. This again demonstrates that USAC's claim is incorrect.

It is not possible that the early termination costs were included, and were instead only listed as described above. Since Net Carrier was awarded the lowest point value for the cost of eligible services, yet had the highest overall point value, including other decision factors, this is completely consistent with USAC rules and this FRN should not have been denied.

To ensure that this is properly understood, I will summarize the error made by USAC. We are puzzled how USAC could claim this, yet not seem to understand what they claimed, and then ignore the explanation. USAC claimed that the district included early termination charges when bidders were evaluated. This would require that the termination charges were added to the bids submitted by Xtel, Cogent and Optimum Lightpath. Termination charges would not have applied to the Net Carrier bid. This would have more than doubled the amount bid by Xtel and Optimum Lightpath and caused the Cogent bid to be slightly less than double. As indicated, the district did record the early termination charges on the bid evaluation and calculated the 36-month cost, regardless of the term listed in the bids, for State purposes, but this could not have been a factor. For this to be true, as USAC claims, Net Carrier must be the bidder with the lowest cost and therefore awarded the highest number of points for cost. The bid evaluation clearly awards Net Carrier the lowest point value for cost, which is the exact opposite of what USAC claims. This proves that termination charges could not have been a decision factor or included in the bid evaluation.

In addition to the fact that the Bid Evaluations clearly demonstrate that ineligible charges could not have been included, there are additional factors, which were referenced in the response to the reviewer. While we offered to explain in more detail, we never heard back from the reviewer. As indicated in the Appeal to USAC, there has been an on-going issue with USAC, in which the reviewers either do not receive our response or ignore the response entirely.

Xtel was considered to be incomplete. On the Bid Evaluation, under Xtel, there is a note stating, "Contract not viable. Does not guarantee bandwidth." While Xtel was considered, due to the

unusually low price, their bid and contract had many flaws. Included in the attachment is a copy of the Xtel contract (pages 10-14 of the attachment). The contract states, "Internet. Xtel cannot guarantee speeds of uninterrupted, error-free service. Internet Speeds are distance and location-sensitive and speed will vary based on factors such as, etc." This language is common for a Cable Modem or DSL service, in which the provider is not required to provide a specific bandwidth, and only has to make their "best effort." This is not acceptable or the norm for Direct Internet Access, which absolutely requires that the bandwidth is guaranteed. Xtel refused to remove this language from the contract, as it was a part of their standard Terms and Conditions. As such, Xtel could not guarantee that they would or could provide the bandwidth quoted in their bid. Xtel refused to guarantee that they could or would provide 1000 Mbps of Internet Access.

There were multiple conversations with Xtel regarding this. The price quoted in Xtel's bid was surprisingly low for 2014-2015. The price quoted was the average cost of 100 Mbps, not 1000 Mbps. In 2014-2015, 1000 Mbps of Internet Access in NJ ranged from \$5,000.00 to \$8,000.00 per month, depending on which providers were available in a specific area. The \$5,000.00 figure only applied to customers who were already connected to their incumbent Cable Provider's network, via fiber. While the bid lists 1000 Mbps, Xtel would not confirm that this would be provided for the price quoted. Xtel was asked to clarify if this portion of the contract meant that there was a possibility that they would not deliver 1000 Mbps. Xtel clarified that they could not guarantee the amount of bandwidth being delivered, until after an order was placed, and after a site survey was performed to determine their network capacity. As such, Xtel could not guarantee that they could actually provide 1000 Mbps to the district.

Xtel also refused to confirm the final price of their bid. In their bid (page 3 of the attachment) it states that, "For all Fiber installations, such as Ethernet services, special construction costs not included in this proposal may apply." Xtel would not indicate if special construction charges would apply, and if so, what the cost of these charges might be. Xtel's bid also includes long distance rates, which has nothing to do with Internet Access, making it unclear if they even understood what they were quoting. While Xtel was included in the bid evaluation, there were too many defects with the bid. When Xtel was told about this and asked for a final price, including any and all special construction costs that might apply, Xtel again indicated that they could not provide a final price until after the service was ordered and a site survey was completed. This is unacceptable, as the final cost must be known in order to compare all bids. It is the bidder's responsibility to quote all costs. Xtel did not do so.

The Optimum Lightpath bid was also considered incomplete. This is confusing, but I will try to explain it. The district has a WAN, which was purchased several years ago. The provider that installed the WAN was 4Connections LLC. After the WAN was installed, 4Connections LLC was acquired by Optimum Lightpath. The 4Connections network was never integrated into the Optimum Lightpath network, and remains completely separate. In the State of NJ, there are two cable companies, each with their own service area. Optimum Lightpath is a division of Cablevision. Either Cablevision or Comcast serve a given area, but never both, as their service areas never overlap. Long Branch School District is in Comcast's service area. While it is possible for Optimum Lightpath to provide service, it would require special construction and be very expensive, as Optimum would have to extend their network to the district.

When Optimum Lightpath bid, they erroneously misidentified the district as being part of their network and service area, since it was on the 4Connection's network, which is separate from Optimum Lightpath's network. Optimum quoted the on-network price erroneously. When Optimum Lightpath realized this, they indicated that they would need to revise their bid, as the pricing was incorrect. They never provided the price.

To demonstrate this, there was another FRN for which the same error occurred (see pages 15-17 of the attachment). In this case, the district was re-installing a WAN connection. When a location on the former 4Connections' network is disconnected, Optimum Lightpath will not reconnect it to the 4Connection's network and instead requires that it be connected to the Optimum Lightpath network. The cost of this location was originally quoted by Optimum as \$200.00 per month to be connected to the 4Connection's network. After Optimum realized that this was off-network, the cost was increased to be \$2,000.00 per month. Optimum didn't realize this until after the Form 471 was filed and later revised their quote. After much haggling, Optimum agreed to re-install the old connection to the 4Connection's network, but still required a one-time payment, which was over \$100,000.00. Subsequently, they agreed to reduce this to \$39,400.00, plus \$200.00 per month. A RAL was filed, but denied, since Optimum didn't provide the cost until after the Form 471 deadline. The exact same issue impacted the Internet bid; however Optimum never provided this information.

USAC's decisions are contradictory. For one FRN, USAC denies funding because the bidder did not provide the complete price prior to the Form 471 deadline, while for another FRN, USAC denies a RAL correction, due to the same issue.

While the Xtel and Optimum bids were considered, they were not viable, as the final price was not quoted by either bidder. As such, they were considered incomplete.

USAC denied the FRN for the following reasons. During the Appeal Process, USAC added a new reason. I will include both below and again explain why they are incorrect.

- 1) Long Branch School District did not fairly evaluate bidders based on the cost of eligible services. Within your vendor evaluations you included early termination charges/fees....

*As explained above, this is incorrect and is not possible based on the point values listed on the bid evaluation. Had early termination charges been included, as USAC claims, Net Carrier could not have been awarded the lowest point value for cost, and Xtel awarded the highest point value for cost. Since Net Carrier was awarded the lowest point value for cost, and Xtel the highest point value for cost, this is clearly and demonstrably incorrect. While the bid evaluation does list the cost of early termination charges, this is not a violation of USAC rules, as it was not a factor. This is without even considering that two of the bids were disqualified, yet still scored based on the incomplete information that the district had from the bidders.*

FUNDING COMMITMENT REPORT  
Billed Entity Name: LONG BRANCH SCHOOL DISTRICT  
BEN: 123015  
Funding Year: 2014

Comment on RAL corrections: The following RAL changes requested were not implemented because allowable changes: addition of a non-recurring charge for FRN 2637844. are not

FCC Form 471 Application Number: 957877  
Funding Request Number: 2637778  
Funding Status: Not Funded  
Category of Service: Internet Access  
FCC Form 470 Application Number: 330890001191113  
SPIN: 143015314  
Service Provider Name: NetCarrier Telecom, Inc.  
Contract Number: N/A  
Billing Account Number: N/A  
Multiple Billing Account Numbers: N  
Service Start Date: 07/01/2014  
Service End Date: N/A  
Contract Award Date: 03/13/2014  
Contract Expiration Date: 06/30/2017  
Shared Worksheet Number: 1657983  
Number of Months Recurring Service Provided in Funding Year: 12  
Annual Pre-discount Amount for Eligible Recurring Charges: \$83,988.00  
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00  
Pre-discount Amount: \$83,988.00  
Discount Percentage Approved by the USAC: 88%  
Funding Commitment Decision: \$0.00 - Bidding Violation  
Funding Commitment Decision Explanation: Based on documentation provided, FRN 2637778 is denied because you did not fairly evaluate bidders based on the cost of eligible services. Within your vendor evaluation you included early termination charges/fees within your total price of eligible goods and services factor. Applicants must select the most cost-effective provider of the desired products or services eligible for support, with price of the eligible goods and services being the primary evaluating factor. Since you included the cost of ineligible services in the evaluation of the cost of eligible services, you have failed to adhere to this requirement and the FRN is denied.

FCDL Date: 03/01/2016  
Wave Number: 077  
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2017  
Consultant Name: RTC/TRMG  
Consultant Registration Number (CRN): 16054718  
Consultant Employer: RTC/TRMG



## Service Agreement

Date: 1/27/2014

### Customer Information

Customer Status: Existing Customer

Customer Name: LONG BRANCH BOARD OF EDUCATION

Billing Address: 540 BROADWAY LONG BRANCH NJ 07740  
*Street Address Suite City State Zip Code*

Billing Contact: Christopher Dringus *Phone* 732571286840090 *Email* cdringus@longbranch.k12.nj.us

Order Contact: Christopher Dringus *Phone* 732571286840090 *Email* cdringus@longbranch.k12.nj.us

Lightpath Contact: Gregory Mosca *Phone* 201-644-9648 *Email* gmosca@golightpath.com

### Lightpath Services

The above Customer agrees to the ordering of the following Lightpath Services:

Order Type: ADD  
Service Location Type: New Build  
'A' Location: 540 Broadway, Long Branch, NJ 07740  
Demarc: 1st Floor Telco Room

Account #: 48491  
Service Location Type:  
'Z' Location:  
Demarc:

	Individual Monthly Recurring Charge	Quantity	Total Monthly Recurring Charge	Non Recurring Charge
1 Internet 1GB	\$5,500.00	1	\$5,500.00	\$0.00

Agreement Term: 5 years

Total Monthly Recurring Charge: \$5,500.00

Total Installation Charge: \$0.00

For Internal Use Only

Addendum ☐

### Remarks

### Terms and Conditions

Customer acknowledges receipt of and agrees to be bound by the Terms and Conditions and any applicable Addenda of Cablevision Lightpath, Inc. ("Lightpath"), attached and/or as set forth at [www.GoLightpath.com](http://www.GoLightpath.com). Cablevision Lightpath, Inc., with offices at 200 Jericho Quadrangle, Jericho, NY 11753, executes this Agreement on its behalf and on behalf of its subsidiaries, Cablevision Lightpath CT LLC, for Services purchased in CT and Cablevision Lightpath NJ LLC, for Services purchased in NJ. Customers purchasing Hosted Voice Service will be bound by the Hosted Terms and Conditions attached. Customer will be responsible for the rates listed on the Service Agreement form and all applicable local, state and federal taxes, charges and assessments along with any other applicable charges.

The Customer agrees to allow Lightpath to represent its name as a customer on marketing and sales materials including Lightpath websites.

Agree ☐ Do not Agree ☐

#### Agreed by:

##### Customer

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

##### Cablevision Lightpath, Inc.

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Xtel Communications, Inc.  
401 Route 73 North  
Building 10, Suite 106  
Marlton, NJ 08053  
Main: 856.596.4000  
Fax: 856.596.9777

# QUOTATION

Date: February 11, 2014  
Quote #: 0532-0533  
Valid Until: Valid for 30 Days from Date  
Term: 36 Months

Quotation For:  
Long Branch BOE  
540 Broadway  
Long Branch, NJ 07740-5905  
Main: (732) 571-2868

Sales Person: Bill Cohen

Monthly Recurring Charges					
Product	Line Description	Qty	List Price	Sales Price	Total Price
Ethernet, 1000M (1Gb) EDIA		1	\$3,900.00	\$3,900.00	\$3,900.00
IP Address-1 (1usable)		1	\$0.00	\$0.00	\$0.00
Sub Total					\$3,900.00

Non-Recurring Charges					
Product	Line Description	Qty	List Price	Sales Price	Total Price
Ethernet- Installation		1	\$1,000.00	\$0.00	\$0.00
Switch, Adtran 8044		1	\$1,545.00	\$0.00	\$0.00
Sub Total					\$ 0.00

Standard Rates of \$.029/minute for Interstate and Intrastate Long Distance calls, and \$.015/minute for Local calls, will apply for all call traffic not included within a call package in this proposal. This includes any call overage for proposed minute plans. The standard rate for all Toll Free calls will be \$.039/minute for Interstate and \$.045/minute for Intrastate, unless otherwise noted in this proposal.

This quote assumes that your network can adequately accommodate the proposed services. If it cannot, additional charges may apply. This includes any necessary Ethernet Runs, Switches, or VLAN configurations not accounted for in this proposal. For all fiber installations, such as for Ethernet services, special construction costs not included in this proposal may apply.

To accept this quotation, sign here and return:

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_



James M. Smith, Jr., President, American Society of Mechanical Engineers

[illegible][illegible]

If you have an agent (3rd party) that is contracted with MyCarrier, by clicking the agreement you agree that said agent has access to all information necessary to assist MyCarriers with processing and conducting your account. The agreement includes and incorporates the terms and conditions on the attached Master Service Agreement (MSA). Customer authorizes MyCarrier Telecom, Inc. to use its Customer Proprietary Network Information (CPNI), as defined by the Federal Communications Commission, to assist in and/or provide recommendations as further telecommunications products and services.

It is the Customers obligation and responsibility to cancel their telecommunication services with their previous carrier.

Customer Signature _____	Date _____
NotCarrier Representative _____	Date _____

\_\_\_\_\_

Cogent Communications Inc.

## Price Schedule

\*3rd Party Provider- Verizon

\*All quoted services are eligible for E-Rate discounts.

Date		Quote Number	Expiration Date	Product					
1/10/2014		1	30 Days	Off-Net Dedicated Internet Access					
Site #	Service Address	City	State	Zip Code					
1	540 Broadway	Long Branch	NJ	07740					
Site #	Product	Description	Eligible Monthly Charge	Ineligible Monthly Charge	Eligible NRC Install	Ineligible NRC Install	Install Time	Service Term	
1	Dedicated Internet Access	500 Mbps	\$ 5298.00	N/A	\$ 1500.00	N/A	90 Business Days	One year	
1	Dedicated Internet Access	500 Mbps	\$ 5048.00	N/A	\$ 1500.00	N/A	90 Business Days	Two year	
1	Dedicated Internet Access	500 Mbps	\$ 3671.00	N/A	\$ 200.00	N/A	90 Business Days	Three year	
1	Dedicated Internet Access	1000 Mbps	\$ 9256.00	N/A	\$ 3800.00	N/A	90 Business Days	One year	
1	Dedicated Internet Access	1000 Mbps	\$ 8756.00	N/A	\$ 3800.00	N/A	90 Business Days	Two year	
1	Dedicated Internet Access	1000 Mbps	\$ 6358.00	N/A	\$ 1000.00	N/A	90 Business Days	Three year	

Received  
Long Branch Public Schools

MAY 2 2016

School Business Administrator  
Board Secretary



Universal Service Administrative Company  
Schools & Libraries Division

**Administrator's Decision on Appeal – Funding Year 2014-2015**

April 29, 2016

Mark Seltzer  
RTC/TRMG  
256 Eagleview Blvd #513  
Exton, PA 19341

*C. CD -  
Chris Pleon run*

Re: Applicant Name: LONG BRANCH SCHOOL DISTRICT  
Billed Entity Number: 123015  
Form 471 Application Number: 957877  
Funding Request Number(s): 2637778  
Your Correspondence Dated: March 29, 2016

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2014 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2637778  
Decision on Appeal: Denied  
Explanation:

- USAC denied your appeal based on documentation provided. FRN 2637778 is denied because Long Branch School District did not fairly evaluate bidders based on the cost of eligible services. Within your vendor evaluation you included early termination charges/fees within your total price of eligible goods and services factor. Applicants must select the most cost-effective provider of the desired products or services eligible for support, with price of the eligible goods and services being the primary evaluating factor. Since you included the cost of ineligible services in the evaluation of the cost of eligible services, you have failed to adhere to this requirement. You have not demonstrated on appeal that USAC's determination was incorrect. Consequently, USAC denies your appeal.
- FCC rules state that, in selecting a service provider, the applicant must carefully consider all bids submitted and must select the most cost-effective service or

equipment offering, with price being the primary factor, which will result in being the most cost-effective means of meeting educational needs and the technology plan goals. *See* 47 C.F.R. secs. 54.511(a), 54.503(c)(2)(vii), 54.504(a)(1)(xi). *See* also Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board of Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., SLD Nos. 321479, et al., CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26407, FCC 03-313 paras. 47-55 (Dec. 8, 2003). Service providers shall not charge the entities a price above the lowest corresponding price. *See* 47 C.F.R. sec. 54.511(b). In order to ensure that applicants are not requesting discounts for services beyond their reasonable needs, USAC denies funding request(s) for not being cost-effective. The costs of the products and services in a funding request should not be significantly higher than the costs generally available in the applicant's marketplace for the same or similar products or services. For example, equipment at prices two or three times greater than the prices available from commercial vendors would not be cost effective, unless there were extenuating circumstances. *See* Ysleta Order para. 54.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

	Burling Point	Cogent	Optimum Lightpath	Xtel	Net Carrier
				After 28 day period	After 28 day period
				Comcast resale	
Points Awarded				how long to set this up	
Monthly Cost	\$11,778.00	varies- see below	\$4,000.00	\$2,745.00	
	not quoted	varies-see below	500 Mbps	\$2545.00 one-time charges	
	Incomplete Bid		1000 Mbps	500 Mbps	
		500 Mbps	\$5,500.00	36 mo term	
		12 month - \$5298.00/Install \$1500.00	1000 Mbps	\$3,900.00	\$6,999.00
	3 Yr Term	24 month - \$5048.00 / Install \$1500.00	60 mo term	\$2545.00 one-time charges	
		36 month - \$3671.00/ Install \$200.00		1000 Mbps	
				36 mo term	
		1000 Mbps			
		12 month - \$9256.00/Install \$3800.00			
		24 month - \$8756.00 / Install \$3800.00			
		36 month - \$6358.00/ Install \$1000.00			
					UNCLEAR ON THIS SHEET NEED FURTHER DISCUSSION
cost	80	0	72	75	80
prior experience	15	0	0	0	68
managemnet	5	0	5	5	15
	100	0	77	80	5
				85	88
COST 36 MONTHS		22888	198000	140400	251964
EARLY TERM FEE		72600	72600	72600	0
SET UP FEE		1000	0	2545	0
		\$ 302,488.00	\$ 270,600.00	\$ 215,545.00	\$ 251,964.00
				Contract not viable	
				Does not guarantee	
				bandwidth	

Second Bid Evaluation

	Burling Point	Cogent	Optimum Lightpath	Xtel	NetCarrier
Cost Of Elig Services	80%	65	70	80	75
Prior Experience	15%	0	5	5	15
Management Capability	5%	5	5	5	5
Points Awarded		70	80	90	95
Monthly Cost					
	\$11,778.00	varies- see below	\$4,000.00		
	not quoted	varies- see below	500 Mbps	\$2,745.00 one-time charges	\$5,750.00
	Incomplete Bid			500 Mbps	500 Mbps
		500 Mbps		36 mo term	36 mo term
		12 month - \$5298.00/Install \$1500.00	\$5,500.00		
	3 Yr Term	24 month - \$5048.00 / Install \$1500.00	1000 Mbps	\$3,900.00	\$6,999.00
		36 month - \$3671.00/ Install \$200.00	60 mo term	\$2545.00 one-time charges	1000 Mbps
				1000 Mbps	36 mo term
				36 mo term	
		1000 Mbps			
		12 month - \$9256.00/Install \$3800.00			
		24 month - \$8756.00 / Install \$3800.00			
		36 month - \$6358.00/ Install \$1000.00			
3 yr Cost					
		\$228,888.00	\$198,000.00	\$140,400.00	\$251,964.00
		36 month term	60 month term	36 month term	36 month term
					Cost to breakdown contract
					\$72,600.00
Total cost including cost to break current contract.		\$302,488.00	\$270,600.00	\$215,540.00	\$251,964.00

Original Bid Evaluation



## Terms and Conditions

The following terms and conditions are applicable to all Sales Orders for Xtel Services:

**1. Term and Renewal.** This Agreement and its Proposal(s) and/or Service Schedules ("Proposals") incorporated herein by reference ("Agreement") are effective on the Effective Date set forth above and will continue for the term set forth in the Proposal from the date that Services are installed until either terminated pursuant to the provisions below or replaced with a new agreement (the "Term"). Upon expiration of the Term, this Agreement will automatically renew for consecutive periods equivalent to the initial Term (each, a "Renewal Term") until either party provides the other party with written notification of their intent not to renew. Such notification must be provided at least ninety (90) days prior to the end of the Term then in effect. In the event a Customer provides written notice of its intent not to renew but does not terminate Services hereunder, Xtel shall have the option of continuing to provide such Services on a month to month basis, priced at Xtel's then current monthly rates.

**2. Charges for Services. Billing and Payment; Credits.** Customer is responsible for paying all charges that apply to the Services ordered on a Proposal or used on a per-use basis by Customer, including items such as features, installation, labor, repair, long distance, and directory or operator assistance as specified on the Proposal or set forth in Xtel's Price Lists or Tariffs. Customer is responsible for taxes, surcharges, fees, and assessments that apply to the sale and use of Services, including how those may change in the future. Xtel will bill Customer monthly for the Service, payable on receipt of the bill notice. Billing at a location will begin upon the Installation Date (which may be the date that an access circuit is installed). If multiple customer locations will have service installations, billing may commence for a location regardless of the installation status at the other locations. Billing may commence 30 days after delivery of the applicable facility and/or equipment to the Customer premises (if the delay in connection of the facility and/or equipment is due to Customer or its agent). Xtel may choose to bill in full monthly increments with no proration for partial service periods when service either starts or ends in the middle of a billing cycle. Paper bills are available only upon request and for a monthly charge and billing for usage will round up to the next cent. If Customer authorizes payment by credit or debit card, then Xtel will not obtain further consent or provide additional notice before invoicing the credit or debit card for all amounts due and owing. All taxes, surcharges, rates, fees, and product fees are subject to change without notice based on changes to Federal and State guidelines and regulations and all applicable tariffs and publicly available terms and conditions, as well as increased network and billing charges.

**3. Disputes.** To dispute a bill, Customer must do so in good faith and deliver to Xtel in writing the specific basis for such dispute within 30 days after the date on the bill. If Customer does not follow this dispute process, the dispute shall be deemed waived. Each party has the right to discuss issues directly with the other party and Xtel may refuse to discuss issues through Customer's external representative.

**4. Partial Payments; Late Payments.** All amounts due Xtel are payable in full within (30) days from the date of the invoice. If Xtel does not receive full payment when due, or does not receive payment in immediately available funds, Xtel will add a late payment fee of 1.5%, or the maximum rate allowable by law, to the amounts owed and will calculate such fee as the total owed times the interest rate. Xtel may accept any payments Customer marks as being "payment in full" or as being settlement of any dispute without waiving any rights Xtel has to collect the full payments from Customer. Customer is responsible for paying all costs and fees Xtel incurs as a result of collecting Customer's unpaid charges.

**5. Credit and Deposits.** Customer authorizes Xtel to ask credit-reporting agencies for Customer's credit information. Xtel may require Customer to submit an initial security deposit and/or advance payment and an additional deposit and/or advance payment if Customer increases Services or Customer's credit rating changes. The deposit will be refunded if satisfactory credit has been established or upon termination of this Agreement for any reason, except that Xtel at its discretion may apply the deposit to any amount due and unpaid by Customer.

**6. Services Location; Moves.** Customer is responsible for providing an environment that is suitable for the Services, including equipment that is compatible with Xtel's network. Customer shall provide Xtel with the correct address to obtain Services because Xtel relies on such information to determine which taxes, fees, surcharges and assessments apply to Services. If Customer does not provide a valid address, Customer will be responsible for any resulting taxes, fees, surcharges, assessments and penalties related thereto. Customer will notify Xtel if Customer's address changes, in which case Xtel may either (a) terminate the affected Services; or (b) allow Customer to provide 60 days' advance notice to Xtel to move Services to a new location and pay any applicable installation charges. Customer will enter into a new Agreement for such new location or Xtel will apply the liquidated damages set forth in Section 14 for the terminated location. Charges could apply and monthly fees may be affected for moves.

**7. Xtel-Provided and Owned Equipment.** Any equipment installed by Xtel on Customer's premises that is not the subject of a sale or lease to Customer (such as the switches, gateway devices, routers, phones and interface cards, if applicable) shall remain at all times the property of Xtel. Equipment shall remain in good condition, less normal wear and tear. Xtel shall be responsible for the maintenance and repair of the equipment unless it is damaged as a result of the action or inaction of Customer or its employees or agents, in which case Customer shall reimburse Xtel for the cost of any necessary repairs or replacement. Customer shall provide Xtel reasonable access to the equipment for purposes of repair, maintenance, removal or otherwise. If Xtel does not have access to Customer's premises within 30 days after Customer terminates with Xtel, Customer shall reimburse Xtel for the full purchase price of the equipment as well as any attorney's fees and costs. Xtel equipment shall be used exclusively for the purpose of providing the Services pursuant to this Agreement, unless otherwise agreed to in writing by the parties.

**8. Customer-Provided Equipment and Equipment Sold to Customer.** Xtel shall have no obligation to install, maintain, repair, or replace the equipment unless otherwise agreed to in writing by the parties. If, on responding to a Customer initiated service call, Xtel and Customer jointly determine that the cause of the service deficiency was a failure, malfunction or the inadequacy of equipment other than Xtel's Equipment, Customer shall compensate Xtel for actual time and materials expended during the service call. All manufacturer expressed warranties for equipment, and the enforcement of manufacturer warranties, are solely up to the manufacturer and the Customer. Xtel shall have no obligation to enforce manufacturer expressed warranties.

**9. Disconnection of Current Provider; Special Construction; Third Party Charges.** Customer is solely responsible for disconnecting Services with its current service provider. Xtel is not responsible for any charges assessed against Customer by such provider. Customer shall pay all charges if Xtel or a third party provider is required to extend the demarcation point or undertake special construction for Customer. Unless Xtel specifically agrees in writing to undertake equipment installation and maintenance work, Customer is responsible for all charges assessed by its phone system vendor and other third parties in connection with the installation of the Services and Xtel shall have no responsibility for maintenance or repair of same.

**10. Internet.** Xtel cannot guarantee speeds or uninterrupted, error-free service. Internet speeds are distance and location-sensitive and speed will vary based on factors such as the condition of wiring inside a specific location, computer configuration, network or Internet congestion, the server speed of the Web sites accessed, and other factors.

**11. IP Address Allocation Policy.** Xtel assigns IP addresses to its customers for use with certain IP/data based Services. The Customer must be able to exhibit at least 80% utilization of all assigned IP addresses. Xtel reserves the right to repossess IP Addresses if utilization falls below 80% utilization. Xtel shall retain any assigned public IP address when a customer's service is terminated. Xtel and Customer agree that assigned addresses are "non-portable" and other providers are not allowed to route these addresses. Customer, who has its own IP addresses, which are allocated directly from American Registry for Internet Numbers (ARIN), will be ported/routed by Xtel where reasonably possible. However, Xtel cannot guarantee the portability/routability of these addresses beyond its own backbone and to the Internet in general. Xtel reserves the right to modify its IP Address allocation Policy without notice.

**12. Acceptable Use Policy.** Xtel supports the free flow of information and ideas over the Internet. Xtel does not actively monitor nor does Xtel exercise editorial control over the content of any web site, electronic mail transmission, mailing list, News Group or other material created or accessible over Xtel networks. However, Xtel reserves the right to remove any materials, that, in Xtel's sole discretion, are potentially illegal, may subject Xtel to liability, or violate this Acceptable Use Policy ("AUP"). Such materials may include, but are not limited to, material that is inappropriate, obscene (including child pornography), defamatory, libelous, threatening, abusive, hateful, or excessively violent. Any violation of this Policy may result in the suspension or cancellation of Xtel services without liability to Xtel. Channeling any part of any such activity through Xtel's network resources shall constitute a violation of this Policy. XTEL WILL IN NO EVENT BE LIABLE OR RESPONSIBLE FOR THE INTERNET OR ANY INFORMATION CONTAINED THEREON. XTEL DOES NOT WARRANT AND DOES NOT ASSUME ANY LIABILITY FOR ANY CONSEQUENCES SUFFERED BY ANY PERSON AS A RESULT OF OBTAINING INTERNET ACCESS INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM INTERNET CONTENT OR FROM COMPUTER VIRUSES.

Using Xtel services and equipment for illegal purposes or in support of illegal activities is strictly prohibited. Xtel reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Activities, which are in violation of any local, state or federal laws, statutes, regulations, treaties and/or tariffs, would constitute a flagrant violation of the AUP. Should any Customer activity threaten the integrity of or threaten to adversely affect Xtel's network, Xtel shall be allowed to take steps to reduce or contain the damage, including termination or suspension of the DIA Service.

**13. SPAM.** Xtel prohibits the transmission, distribution or storage of unwanted or offensive content. Prohibited transmissions include without limitation, viruses, trojan horse programs, messages which include character sequences intended to control the recipient's computer or display screen, make-money fast schemes, pyramid or chain letters, fraudulent offers, threats, harassment, defamation, postings to a newsgroup in violation of its rules, charter or FAQ, unsolicited advertising (whether commercial or informational) and unsolicited e-mail ("SPAM"). Xtel strongly opposes SPAM, which floods the Internet with unwanted and unsolicited e-mail and deteriorates the performance and availability of the Xtel network. All forms of SPAM, and all activities that have the effect of facilitating SPAM, are strictly prohibited. Violation of this provision will result in termination of any applicable Service Attachment and/or Customer's entire Master Agreement. Xtel shall be allowed to take any action it deems necessary to prevent the transmission, distribution or storage of SPAM.

**14. Fraud and Network Security.** Xtel is not liable for any damages Customer may incur as a result of the unauthorized use of Customer's network facilities. In no event will Xtel be liable for protection of Customer's network, transmission facilities or equipment from unauthorized access, or for any unauthorized access to or alteration, theft or destruction of Customer's data files, programs, procedure, information or other network elements or content through fraudulent means or devices. Xtel shall have the right, but not the obligation, to immediately deactivate Customer's services in the event Xtel reasonably believes such service is the subject of theft or fraud.

**15. Privacy.** Xtel limits the information collected from Customer to what is needed for conducting business, including the offering of products and services by Xtel or by third parties that might be of interest to Customer. Customer may choose to provide personal information to Xtel in a number of ways: in person, telephonically or electronically via email or our websites. Xtel does not sell Customer's personal information to any third parties. Xtel is not liable for any lack of privacy which may be experienced with regard to Xtel provided services or third party provided services.

**16. American Recovery and Reinvestment Act (ARRA).** Customer must notify Xtel of all restrictions, requirements and reporting obligations to which Xtel could become subject pursuant to the ARRA before Xtel provisions Services to Customer. Customer will



not use ARRA or stimulus funds, grants or loans, in whole or in part, to support its performance under this Agreement without Xtel's prior written consent regarding any specifically applicable ARRA terms. If Customer fails to provide such prior written notice to Xtel of ARRA or stimulus funding or if Xtel does not consent to the use of such funding, then Xtel has the right, in its sole discretion, to reject any order or terminate this Agreement and/or any applicable Services, without liability or obligation to Xtel.

**17. Documents Incorporated by Reference; Entire Agreement; Counterparts; Execution.** This Agreement, the documents incorporated by reference and any Customer Addendums entered between the parties constitute the Parties' entire Agreement. This Agreement and any Addendums hereto may be amended only in writing signed by authorized representatives of each party. This Agreement and its incorporated documents supersede any and all statements or promises made to Customer by any Xtel employee or agent. This Agreement may be signed in counterparts, and facsimile or electronic scanned copies may be treated as original signatures. Xtel also may execute this Agreement via a verifiable electronic signature.

**18. Termination.** Either party may terminate this Agreement by providing at least 90 days' notice prior to the end of the initial Term or a Renewal Term or if the other party is in breach of any material provision of this Agreement and such other party fails to cure within 30 days after written notice. Notwithstanding, unless prohibited by law, in the event of nonpayment, the breaching party shall have 10 days to cure after written notice. Customer's right to terminate for cause is limited to termination of the affected Services at the affected location only. Xtel may limit, interrupt or terminate Services immediately if: (a) after any required notice, Customer has not paid for Services; or (b) Customer uses the Services in an adverse manner that affects Xtel's network or other customers; or (c) Customer or others have used the Services fraudulently or unlawfully while on Customer's premises or while the Services are under Customer's control; or (d) Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services; or (e) Customer resells any Services or uses the Services to aggregate other persons' traffic; or (f) Customer uses the Services for its own end users and/or customers as a telecommunications provider or any other kind of provider. In addition to the termination rights of Xtel set forth above, if Customer or others use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services (including, but not limited to, circumstances in which Xtel is receiving traffic from Customer that originates from a location other than the local calling area associated with the customer's service location, when 10% or more of Customer's calls are 6 seconds or less, and/or when more than 40% of call attempts are uncompleted per trunk group and DS0/DS0 equivalent), Xtel may: (v) charge long-distance charges for such traffic and any additional charges necessary to recoup its administrative costs and any charges from other carriers; (w) charge an additional price per minute in Xtel's discretion for each call that violates this provision; (x) restrict or cancel use or convert customer to another plan; (y) require customer to pay for the excessive use immediately and make a deposit; and/or (z) void any applicable price guarantee. Xtel may restore service if customer corrects the violation and pays all outstanding amounts owed, including restoration charges. For Ethernet Internet Access services, MPLS, Ethernet Private Line, Virtual Private Network/Virtual LAN Services, Xtel shall verify the availability of facilities, and in the event that Xtel determines in its sole discretion that facilities are not economically or technically feasible, Xtel has the right to terminate this Agreement without liability.

**19. Effect of Termination.**

a. Pre-Installation- If Customer terminates this Agreement after the Effective Date but prior to the installation of Service(s), Customer will pay Xtel a Pre-Installation Cancellation Charge (Cancellation Charge) equal to three months of MRCs except that if Xtel's costs to other providers are greater than this amount, Customer shall also reimburse Xtel for such costs. Customer agrees that the Cancellation Charge is a reasonable measure of the administrative costs and other fees incurred by Xtel to prepare for installation. The Cancellation Charge set forth in this Section 19(a) is in lieu of the charges set forth in 19(b) below for post-installation cancellations.

b. Post-Installation- CUSTOMER UNDERSTANDS THAT ITS RATES ARE BASED UPON ITS COMMITMENT TO PURCHASE SERVICES FOR THE TERM OR RENEWAL TERM. AS SUCH, IF CUSTOMER TERMINATES THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR CAUSE, OR AS A RESULT OF XTEL'S TERMINATION FOR CUSTOMER'S BREACH, CUSTOMER SHALL PAY TO XTEL AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AN AMOUNT EQUAL TO 100% OF THE MRCs MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM ("LIQUIDATED DAMAGES"). CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO DETERMINE AND SUCH LIQUIDATED DAMAGES REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES WHICH MAY BE INCURRED BY XTEL, INCLUDING BUT NOT LIMITED TO ACTUAL EXPENSES INCURRED BY XTEL TO INITIATE OR TERMINATE THE SERVICES, THIRD PARTY COSTS, USE OF LIMITED NETWORK RESOURCES, INSTALLATION CHARGES WAIVED AND ANY DISCOUNTS OR CREDITS GRANTED. If Customer's Proposal Includes Monthly Minimum Charges or Fees ("MMCs" or "MMFs") and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below the MMC or MMF for that location, Customer will pay the MMC or MMF every month in lieu of the Liquidated Damages set forth above. If Customer's Proposal does not include MMCs or MMFs and Customer terminates or disconnects less than the entirety of its Services such that its actual usage at a location falls below 100% of its original contracted rate for that location, Customer will pay 100% of the MRCs every month in lieu of the Liquidated Damages set forth above. Additionally, if Customer received a bundled rate for the disconnected Service(s), then Customer's charges may be adjusted by Xtel to the unbundled service rates.

**20. Limitation of Liability and Indemnity.** FOR PURPOSES OF THIS SECTION, DISCLAIMER OF WARRANTIES, AND EMERGENCY. CRITICAL LINES PROVISIONS, "XTEL" INCLUDES ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHICH BEHALF XTEL RESELLS SERVICES. XTEL'S LIABILITY FOR SERVICES PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED CUSTOMER'S MRCs DURING THE PERIOD IN WHICH THE DAMAGE OCCURS. IF CUSTOMER'S SERVICE IS INTERRUPTED, XTEL'S LIABILITY WILL BE LIMITED TO A PRO-RATA CREDIT FOR THE PERIOD OF INTERRUPTION. UNDER NO CIRCUMSTANCES WILL XTEL BE LIABLE FOR ANY ACCIDENT OR INJURY CAUSED BY SERVICES, ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE

SERVICE, OR ATTORNEY'S FEES OR FOR ANY DELAY OR FAILURE TO PERFORM UNDER THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO SERVICE INTERRUPTIONS) DUE TO CAUSES BEYOND XTEL'S REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO, STRIKES, LOCKOUTS, OTHER LABOR UNREST, CABLE CUTS OR COMMON CARRIER DELAYS. CUSTOMER AGREES THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF THE PARTIES TO LIMIT XTEL'S LIABILITY AS PROVIDED HEREIN. EACH PARTY WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, AND ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL THIRD-PARTY CLAIMS ARISING OUT OF THE INDEMNIFYING PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT. XTEL IS NOT RESPONSIBLE OR LIABLE IF SERVICES ARE LOST, STOLEN OR MISUSED, EXCEPT WHEN DUE SOLELY TO XTEL'S NEGLIGENCE OR GROSS MISCONDUCT. CUSTOMER IS RESPONSIBLE FOR ALL USAGE, CHARGES, AND LIABILITY INCURRED FOR SUCH LOSS, MISUSE, OR THEFT OF SERVICES WHILE IN CUSTOMER'S CONTROL, REGARDLESS OF WHETHER WHEN XTEL NOTIFIES CUSTOMER OF INCREASED USAGE.

**21. Disclaimer of Warranties.** SERVICES ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ANY WARRANTY THAT THE SERVICES WILL MEET CUSTOMER'S requirements OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON OR PASSING THROUGH OR OVER THE NETWORK AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, BROADBAND SPEEDS, TRANSMISSION QUALITY, AND ACCURACY OF ANY DIRECTORY LISTINGS ARE NOT GUARANTEED. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY XTEL'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.

**22. Emergency. Critical Lines.** CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICES MAY NOT PROVIDE ACCESS TO 911 OR TRANSMIT THE LOCATION OR EXTENSION IF CUSTOMER ATTEMPTS TO ACCESS 911 IN AN EMERGENCY. Examples include voice over Internet protocol, Hosted PBX, SIP Trunks, Centrex, and private branch exchange. Additionally, because T1s, VoIP, and Hosted PBX can cease operating during a power outage, Customer should have a basic business or copper line for elevator, alarm, E911 and other critical functions. By signing this Agreement, Customer acknowledges that Customer has read this disclosure. By proceeding with use of Services, Customer assumes all responsibility and risk of harm, loss, or damage in the event that 911 access fails, is not possible, or does not provide the address, correct address, extension or other information to emergency authorities.

**23. Confidentiality.** Except when this Agreement is required to be filed with a governmental authority or as may otherwise be required by local, state or federal freedom of information laws, the Parties agree that this Agreement contains proprietary and confidential information and shall not be disclosed publicly to any third party except the such dealer(s) or agent(s) of Xtel that are negotiating with Customer in order to execute this Agreement.

**24. Telephone Numbers.** In no event shall Xtel be liable for (i) any telephone numbers published or distributed by Customer prior to acceptance of Service at all of the locations covered under the Agreement; or (ii) for any directory publishing error.

**25. Force Majeure.** Neither Party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, flood, storm, or other similar catastrophe, any law, order, regulation, direction, action or request of the government, or any department, agency, commission, court, or bureau of a government, or any civil or military authority, national emergency, insurrection, riot, war, strike, lockout, or work stoppage (each, a "Force Majeure Event"). The Party claiming relief under this Section shall notify the other Party of the occurrence or existence of the Force Majeure Event and of the termination of such event. In the event Company is unable to deliver Services as a result of a Force Majeure Event, Customer shall not be obligated to pay for the Services so affected for as long as the Company is unable to deliver the Services.

**26. Miscellaneous.** (a) Notices and Electronic Communications: Any notice pursuant to this Agreement must be in writing and will be deemed properly given if hand delivered, mailed or faxed to Customer at the address populated above or to Xtel at Xtel Communications, 401 Route 73 N, 10 Lake Center Executive Park, Suite 106, Marlton, NJ 08053, or at such other address provided to the other party. **CUSTOMER AGREES THAT XTEL MAY SEND ELECTRONIC MESSAGES TO CUSTOMER CONCERNING XTEL'S SERVICES;** (b) Governing Law: This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the State of New Jersey; (c) Waiver of Jury Trial. **EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.** (d) Assignment: Either party may assign this Agreement to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party but Customer shall provide Xtel with notice and complete all paperwork necessary to effectuate any change in ownership or other account changes. Otherwise, Customer may not assign its rights and obligations under this Agreement without Xtel's advance written consent. Any attempted assignment in violation of this provision is void; (e) Third Party Beneficiaries: No third party shall be deemed a beneficiary of this Agreement; (f) Waiver: Either party's failure to enforce any right or remedy available under this Agreement is not a waiver; (g) Severability: If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect; (h) Survival: Sections 19 through 25 survive after this Agreement ends; (i) Handwritten Changes: Handwritten changes are not binding on either party; (j) Use of Products in U.S. Customer acknowledges that the transfer and use of products, services and technical information outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the products, services or technical information (even if incorporated into other products) except in compliance with U.S. export laws and

regulations. At Xtel's request, Customer shall sign written assurances and other export-related documents as may be required for Xtel to comply with U.S. export regulations; (k) Representation on Authority of Parties/Signatories: Each person signing this Agreement represents and warrants that he or she is duly authorized in accordance with its corporate governance documents and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized in accordance with its corporate governance documents and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**27. Service Level Agreement (SLA).** Xtel's Dedicated Protected Services include Xtel provided Ethernet (Fiber) and Ethernet (Sonet) circuits. Xtel's Dedicated Unprotected Service include Xtel provided DS1 and DS3 circuits, and any Off-Net circuit, where "Off-Net" is defined as any geographic location outside of the Xtel's service area and/or not accessible by Xtel Network facilities. Unprotected Services will meet or exceed 99.9% Network Availability and Protected Services will meet or exceed 99.95% Network Availability. For both Protected and Unprotected Services, Xtel will meet or exceed the following monthly average performance measurements.

SLA Metrics	Protected/Unprotected
Latency (1 Way)	<45ms
Jitter (1 Way)	<45ms
Mean Time to Restore Protected Equipment	4 Hours
Mean Time to Restore Unprotected Equipment	8 Hours
Mean Time to Restore Protected Services	6 Hours
Mean Time to Restore Unprotected Services	9 Hours

**28. Service Outage Credits.** In the event that any Xtel Service provided hereunder has an interruption in transmission that renders the Service unusable due to a total loss of signal for the service ("Total Service Interruption") for reasons other than an Excused Outage, Customer will be entitled to a service credit off of the monthly recurring charge ("MRC") for the affected circuit(s). A Total Service Interruption shall not qualify for the remedies set forth herein if Total Service Interruption is related to, associated with or caused by: Scheduled Maintenance events; customer actions or inactions; customer provided power or equipment or any third party equipment or service not contracted through Xtel. Company's liability for any Total Service Interruption of its Dedicated Services (individually or collectively, "Liability"), shall be limited to the amounts set forth in the below table. The term "Liability" refers to an interruption in transmission that renders the Service unusable due to a total loss of signal for the service ("Total Service Interruption"). For all Total Service Interruptions within any thirty (30) day period, the following credits apply:

Total Service Interruption	Amount
Less Than 4 hours	None
At least 4 consecutive hours but less than 8 consecutive hours	8% of MRC
At least 8 consecutive hours but less than 12 consecutive hours	15% of MRC
At least 12 consecutive hours but less than 16 consecutive hours	25% of MRC
At least 16 consecutive hours but less than 24 consecutive hours	35% of MRC
At least 24 consecutive hours or greater	50% of MRC

**THE TOTAL CREDIT ALLOWANCE PER MONTH IS CAPPED AT 50% OF THAT MONTH'S MRC FOR THE INTERRUPTED CIRCUIT.** For the purposes of calculating credit for any such Liability, the Liability period begins when the Customer reports an interruption in the portion of the Service to Company, provided that the Liability is reported by Customer during the duration of the Liability, and, a trouble ticket is opened; the Liability shall be deemed resolved upon closing of the same trouble ticket or the termination of the interruption, if sooner, less any time Xtel is awaiting additional information or premises testing from the Customer. Multiple events will require multiple trouble tickets to be opened. Service that fails to materially conform to the stated technical specifications and performance standards but is not a considered a total loss of Service shall be considered a Degraded Service, and will not be entitled to Credits.

Form 471 957877 RAL Funding Requests Report

THIS REPORT DOES NOT CONTAIN ANY DECISIONS CONCERNING YOUR REQUESTS FOR DISCOUNTS.  
USE THIS REPORT TO LIST OR INDICATE CORRECTIONS YOU WISH TO MAKE TO YOUR FCC FORM 471.

Follow the guidance posted on the "Ministerial & Clerical Errors" page on our website to make allowable corrections. All corrections - including corrections to new fields - are subject to review for Program compliance and approval.

Corrections Submitted by:

Signature: [Signature]

Date: 5-6-2014

Printed Name: Mark Seltzer

Title: Consultant

Email, Fax Number or Phone Number: MARKSELTZER@TRNGI.COM

F: 610-280-6111

P: 610-280-3810

Item	Data Entered on FCC Form 471	Make Corrections Here
1a. Name of Billed Entity	LONG BRANCH SCHOOL DISTRICT	Corrections Not Allowed
3. Billed Entity Number	123015	Corrections Not Allowed
6. Contact Person's Name	Mark Seltzer	Corrections Not Allowed
6. Preferred mode of contact	Email	Corrections Not Allowed
6c. Contact Phone	610-280-3810	
6d. Contact Fax		
6e. Email	markseltzer@trngi.com	
6f. Holiday/vacation/summer contact information - if provided		

6g. Consultant Name RTC/TRMG  
Consultant Number 16054718  
Consultant Employer RTC/TRMG

The Billed Entity name, address, phone and fax numbers cannot be changed via the RAL correction process.

RAL for FRN 2637844

**Form 471 957877 RAL Funding Requests Report**

ERN: 2637844

IF YOU WISH TO CANCEL THIS ERN, PLEASE CHECK HERE \_\_\_\_\_

Item #	Data Entered on ECC Form 471	Make Corrections Here
11. Category of Service	Telecommunications Service	
12. 470 App#	330890001191113	
13. SPIN	143013604	
14. Service Provider Name	Cablevision Lightpath of New Jersey	
15b. Contract Number	N/A	
16a. Billing Account Number	N/A	
16b. Multiple Billing Account Numbers	N	
18. Contract Award Date	03/13/2014	
19. Service Start Date	07/01/2014	
20a. Service End Date		
20b. Contract Expiration Date	06/30/2019	
22. Block 4 Entity or Worksheet No	1657983	
23a. Monthly Charges	\$3,260.00	
23b. Ineligible Monthly Amt	\$0.00	
23c. Eligible Monthly Amt	\$3,260.00	
23d. Number of months of service	12	
23e. Annual pre-discount amount for eligible recurring charges	\$39,120.00	Calculated - Not Input
23f. Annual Non-Recurring (One-Time) Charges	<del>\$0.00</del> \$39,400.00	
23g. Ineligible Non-Recurring Amt	\$0.00	
23h. Annual pre-discount amount for eligible non-recurring charges	\$0.00	Calculated - Not Input
23i. Total Pre-discount Amt	\$39,120.00	Calculated - Not Input
23j. Discount from Block 4	88	See Block 4 Above
23k. Funding Commitment Request	\$34,425.60	Calculated - Not Input
26f. Service provider assistance with funding	No	

May 6, 2014

I am submitting this description with the RAL for Long Branch Public Schools to provide additional details so that USAC can determine if this request is permitted by the Program.

Prior to the Form 471 being submitted, Optimum Lightpath was unsure about the cost to re-connect one of the district's locations to a fiber network, after renovation on the building was completed. Optimum Lightpath provided a verbal quote, but never committed to a written cost. At the time that the Form 471 was filed, the district was under the impression that the cost would be a \$200.00 monthly fee only. Yesterday, Optimum Lightpath sent an addendum to the contract. In this addendum, Optimum Lightpath indicates that the cost to re-connect this location will be \$200.00 per month, plus \$39,400.00 in one time fees and charges. The \$39,400.00 was never disclosed before. After speaking with Optimum Lightpath, it appears that they forgot to mention that part.

This is clearly an error; however whether or not it is a ministerial error is unclear. We are requesting this RAL correction to include the \$39,400.00 cost, which was inadvertently not disclosed to the district prior to 5/5/2014.

**FY 2014 E-rate Application Information Request**

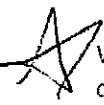
Date: 06.08.15  
Long Branch SD  
Mark Seltzer  
FCC Form 471 Application Number(s): 957877  
**Response Due Date: 06.15.15**

Dear Applicant,

We are in the process of reviewing Funding Year(s) **2014** Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. To complete our review, we need some additional information. The information needed to complete the review is listed below.

**FRN 2637778 NetCarrier Telecom:**

- I. Based on the documentation you provided during the Special Compliance Review, FCC Form 471 Application #957877, FRN 2637778 will be denied because you did not fairly evaluate bidders based on the cost of eligible services. Within your vendor evaluation you included early termination charges/fees within your total price of eligible goods and services factor. Applicants must select the most cost-effective provider of the desired products or services eligible for support, with price of the eligible goods and services being the primary evaluating factor. For additional guidance on vendor selection, please refer to the USAC website at <http://www.usac.org/sl/applicants/step03/evaluation.aspx>.

 When I re-opened the bid evaluation, I noticed that there were two files. I forgot that the district created another evaluation, after we discussed the original. I originally sent you LBPS\_1415\_bid\_evaluation.pdf, but there is also LBPS\_1415\_bid\_evaluation.pdf(2), which I will attach. This was the final one, that the district created, based partially on the original, when they made the final decision, and I completely forgot about it. While it still includes the cost to break the existing contract, it awards the points for cost, without using this termination charges, based on the 36-month cost. In the original, I misstated the Optimum Lightpath cost as \$5,000.00 and it should have been \$5,500.00. It is correct on this version, since it was created after we discussed the original.

This only applies to this FRN. The others used the original bid evaluation. To avoid further confusion, I am going to delete the other tabs on the second evaluation, as they are identical to the original, just in different fonts.

There is actually more to this, but I will keep this brief. Please advise if this is still an issue and I will explain further.